IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7133 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

Nos. 1 to 5 No

IMAMSHA BAVA ROZA SANTHA COMMITTEE TRUST

Versus

SHREE CHARITY COMMISSIONER

Appearance:

MR AJ MEMON for Petitioners

MR SUDHANSHU PATEL for Respondent No. 1

MR MB FAROOQUI for Respondent No. 2, 3, 4

CORAM : MR.JUSTICE H.R.SHELAT

Date of decision: 29/08/2000

ORAL JUDGEMENT

#. By this application under Article 226 of the Constitution of India the petitioners pray for a writ of

certiorari or any other appropriate writ quashing and setting aside the judgment and order dated 16.07.1998 passed by the then learned I/c.Joint Charity Commissioner, Ahmedabad in Judl. Civil Application No.50 of 1993 on his file.

#. There is a Trust called "Shri Pirana Imamsha Bava Roza Sansthan Trust,Ahmedabad." The same is registered with the office of the Deputy Charity Commissioner, Ahmedabad under the Bombay Public Trust Act. The number of registration is PTR No.E-738 Ahmedabad. The petitioner nos. 2 to 10 and respondent nos. 3 and 4 are the trustees of the trust, while the petitioner no.2 is a life-time trustee and the Chairman of the Trust. He is known as "Kaka saheb" under the scheme. It is the case of the petitioners that the scheme of the trust was framed by the then Court of First Class Subordinate Judge,Ahmedabad in Civil Suit No.168 of 1931. As per the decision of the Civil Court in that suit the trust is held to be the public charitable trust and religious institution of Satpanthies. The followers of H.H.Imamsha Bava within and out of India used to donate for the management and administration of the trust and also for the well being of the followers. According to the petitioner the Board of Trustees after passing necessary resolution wanted to renovate the building called "Gadiawala Premises". Hence, the respondent no.2 belonging to Saiyad Branch then moved the Charity Commissioner filing Judicial Misc.Application No.50 of 1993 and prayed that necessary direction not to make any change in Dholia or Gadiawala Premises might be issued. The learned I/c. Jt.Charity Commissioner to whom the matter was assigned, passed the impugned order on 16.07.1998 allowing the application under section 41 of the Bombay Public Trust Act. He directed the petitioners not to construct or alter in a manner which would violate Sections 35 and 36 of the Bombay Public Trust Act. and in the alternative, he also directed not to construct without prior permission under The Wakf Act as the Trust was, being a muslim trust, a wakf under that Wakf Act, 1995, and also without passing the resolution unanimously and obtaining necessary permissions under different laws in force. Being aggrieved by such order this application calling in question the legality and validity of the order is filed under Article 226 of the Constitution of India.

#. The learned Advocate representing the petitioners has at length argued as to how the learned I/c. Jt.Charity Commissioner fell into error in holding about

the category of the trust, giving direction to take decisions unanimously and take different permissions under different Acts qua construction. The lerned Advocates representing the otherside have also in support of their say submitted on different grounds at length; but it is not necessary to dwell upon those rival contentions as the application can well be disposed of on a point going to the root of the case.

#. This Court can interfere with the order passed if there is jurisdictional error or an error in decision-making-process and not the decision itself, or where the authority has disregarding facts and materials on record arbitrarily passed the order amounting to miscarriage of Justice, or complete Justice is required to be done; or where order is passed with malafide, or it is perverse or unreasonable, or absurd, or issue of violation of natural Justice, or question of construction of statutory provision is involved or constitutional point is raised or question of statutory duty or obligation is involved.

#. In view of my such scope of inquiry I will confine to the question whether the authority has with regard to any of the above stated points fallen into error while passing the impugned order. In the case on hand, the learned I/c.Jt.Charity Commissioner has filed his affidavit-in-reply at page 22 wherein he has made it clear that he did not decide about the nature of the trust holding that it was a Muslim Trust and Wakf Act was applicable, though in fact he has so held. He has also held that the Board of Trustees has to take the decision unanimously, but elucidating that fact in his affidavit he has stated that, he did not mean 100% unanimity. He has also in his affidavit made it clear that the trust in question is not a Muslim Trust as most of the beneficiaries are Non Muslims i.e. Satpanthies. Stating on oath accordingly, he has admitted about the errors he has committed. It follows from such facts and circumstances on record that conclusions he has drawn and order he has passed are ill conceived. He meant something different than what he expressed in words. It therefore follows that the order is impracticable being freakish and is likely to mislead or confuse the parties. He has thus, it can be said decided the matter on extraneous considerations or as per his isms and notions ignoring the materials placed before it, which has resulted into miscarriage of justice because compliance of the order will be difficult or embarrassing, or some

of the parties are likely to be in a dilemma. On this count the order is required to be quashed and the learned Jt.Charity Commissioner is required to be directed to consider the application afresh and after hearing the concerned parties pass the appropriate specific and unequivocal order.

#. For the aforesaid reasons the application is allowed. The impugned order dated 16.07.1998 passed by the then learned I/c.Jt.Charity Commissioner, Ahmedabad in Judl.Misc.Application No.50 of 1993 is hereby qushed and set aside. The learned Joint Charity Commissioner shall consider the application a fresh giving reasonable opportunity to the concerned parties and shall pass the appropriate order in accordance with law. If the post of learned Jt.Charity Commissioner is vacant, the learned Charity Commissioner shall hear the Judl. Misc.Application No.50 of 1993 afresh and pass appropriate order in accordance with law. Rule is made absolute.

m.m.bhatt